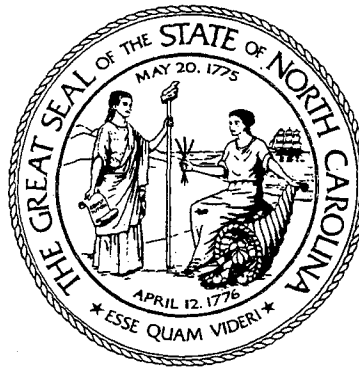


LEGISLATIVE RESEARCH COMMISSION

CREDIT INSURANCE AND MORTGAGE CREDIT



REPORT TO THE
2000 SESSION OF THE
1999 GENERAL ASSEMBLY
OF NORTH CAROLINA

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

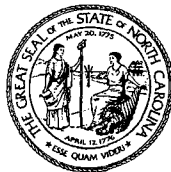
OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

LETTER OF TRANSMITTAL	i
LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP	ii
PREFACE	1
COMMITTEE PROCEEDINGS	3
FINDINGS AND RECOMMENDATIONS.....	14
APPENDICES	
APPENDIX A	
RELEVANT PORTIONS OF THE 1999 STUDIES BILLS, CHAPTER 395	
OF THE 1999 SESSION LAWS (FIRST SESSION, 1999).....	16
APPENDIX B	
MEMBERSHIP OF THE LRC COMMITTEE ON	
CREDIT INSURANCE AND MORTGAGE CREDIT	18
APPENDIX C	
S.L. 1999-332	
(THE PREDATORY LENDING LAW).....	19
APPENDIX D	
LEGISLATIVE PROPOSAL.....	31
A BILL TO BE ENTITLED AN ACT TO ALLOW CREDIT INSURANCE TO BE PAID ON A	
LEVEL CHARGE MONTHLY BASIS WITHOUT VIOLATING THE LAW RELATING TO	
CONSUMER PROTECTIONS IN CERTAIN HOME LOANS.	
ANALYSIS OF THE LEGISLATIVE PROPOSAL	32

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

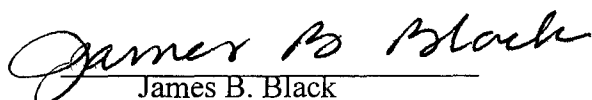


May 4, 2000

TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY (REGULAR SESSION 2000):

The Legislative Research Commission herewith submits to you for your consideration its 2000 Interim report on credit insurance and mortgage credit. The report was prepared by the Legislative Research Commission's Committee on Credit Insurance and Mortgage Credit pursuant to G.S. 120-30.17(1).

Respectfully submitted,


James B. Black
Speaker of the House


Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission

1999 - 2000

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of
the Senate
Marc Basnight, Cochair

Senator Austin M. Allran
Senator Linda D. Garrou
Senator Jeanne H. Lucas
Senator R.L. "Bob" Martin
Senator Ed N. Warren

Speaker of the House
of Representatives
James B. Black, Cochair

Rep. James W. Crawford, Jr.
Rep. Beverly M. Earle
Rep. Verla C. Insko
Rep. William L. Wainwright
Rep. Steve W. Wood

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1998 Session and 1999 Sessions, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of credit insurance and mortgage credit was authorized by Section 2.1(10)(e) of Chapter 395 of the 1999 Session Laws (Regular Session, 1999) and by Section 7(3) of Chapter 332 of the 1999 Session Laws (Regular Session, 1999). The relevant portions of Chapter 395 and Chapter 332 are included in Appendix A.

The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Consumer Protection Grouping area under the direction of Representative Beverly Earle. The Committee was chaired by Senator R. C. Soles, Jr. and Representative Walter Church, Sr. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

First Meeting -- February 22, 2000

At its organizational meeting on February 22, 2000, the Credit Insurance and Mortgage Credit Insurance Committee first reviewed its study charge. Karen Cochrane-Brown, Committee Co-Counsel explained the legislation that authorized this study. The Committee was created as a result of the authorization of the Legislative Research Commission found in the Studies Act of 1999, House Bill 163. The Act authorized the Commission to study credit insurance and mortgage credit, including the licensing, regulation, and examination of mortgage brokers and mortgage lenders, financing of credit insurance premiums, and other aspects of the mortgage market relating to the availability of mortgage credit. These issues may be studied in conjunction with issues required to be studied under Senate Bill 1149 (1999 Session). Senate Bill 1149, the Predatory Lending Law, was enacted in the 1999 Session. That act modified permissible fees which may be charged in connection with home loans secured by first mortgage or first deed of trust, to impose restrictions and limitations on high-cost home loans to revise the permissible fees and practices by mortgage brokers and lenders, and to provide for public education and counseling about predatory lenders. One of the practices prohibited by this law is the financing of single premium credit life, disability, or unemployment insurance or any other life or health insurance premiums. This portion of the law will go into effect July 1, 2000. This Committee is charged to study whether there are specific circumstances in which consumers would benefit from permitting lenders to finance credit insurance premiums which practice is prohibited by the Predatory Lending Law.

Next the Committee heard from Mr. Guy Rohling and Mr. Steve Hamm, representing the Consumer Credit Insurance Association. Mr. Rohling stated that the Association believes that Senate Bill 1149 denies consumers in North Carolina the opportunity to choose which insurance product best suits their financial situation. The Consumer Credit Insurance Association believes this opportunity ought to be provided to the consumers of North Carolina along with adequate and strong consumer and regulatory protections

Mr. Hamm has previously served as Administrator to the South Carolina Department of Consumer Affairs from 1981 - 1994, and currently as a lawyer representing consumer and business interests in a wide range of legal matters in the State of South Carolina. Mr. Hamm stated that he believes that consumers have the right to have all credit insurance products available to them and with the proper regulations in place, the consumers can make an informed decision for themselves. By allowing for proper and consistent disclosure laws, consumers could be protected. Disclosure should be allowed for before the transaction takes place, during the transaction, and after the transaction has been completed. North Carolina now currently has a law in place that allows the consumer 30 days to reject the insurance coverage after the transaction takes place. Broadening the regulatory scope and examination of all those engaged in the real estate market place could also protect consumers. Currently, North Carolina has no such law in place that licenses the mortgage broker. By disallowing single premium insurance, you run the risk of encouraging consumers not to purchase any credit insurance at all. An advantage of single premium insurance is that if the consumer does not make a timely payment, the coverage does not default or disappear. In response to a question, Mr. Hamm stated that currently the "monthly outstanding balance approach" and the "single premium approach" are the two types of payment methods for credit insurance that are offered in the marketplace. He also indicated that the disclosure that he was referring to were not currently being given in North Carolina.

Next the Committee heard from Mr. Martin Eakes, President and CEO of the Self-Help Credit Union and representing the Coalition for Responsible Lending. The Coalition for Responsible Lending is an alliance of 88 organizations and 300 individuals representing 3 million North Carolina citizens dedicated to protecting homeownership by eliminating predatory lending practices. The Coalition was responsible for helping put together the Predatory Lending Bill. This bill, Senate Bill 1149, prohibits prepayment penalties on home loans under \$150,000, the practice of "flipping", financing single- premiums for credit insurance on home loans, and restricts fees and terms on "high-cost" home loans. Mr. Eakes stated that it was critical to build on these reforms by retaining Senate Bill 1149's prohibition on financing single-premium credit insurance, giving the North Carolina Insurance Commissioner the authority to adjust credit insurance rates based on NAIC standards (60% minimum claims payout), and extending prohibition on financed credit insurance premiums to consumer loans made by finance companies. The common goal should be protecting homeowners and their equity. He stated that single-premium financing depletes homeowner's equity. It is difficult for consumers to understand credit insurance and therefore, most consumers cannot make informed purchase decisions. Mr. Eakes argued that single premium credit insurance is not more affordable because monthly payments are only lower because 5 years of coverage is paid over 30 years. Single premiums cost North Carolina homeowners \$50-100 million in lost home equity each year, and even more in interest. Mr. Eakes pointed out that credit insurance is sometimes done in the right way and that CUNA Mutual, the largest credit insurer in the nation, writes their credit insurance through credit unions. CUNA Mutual writes virtually all its policies with monthly outstanding balance premiums. It is never in the consumer's benefit to finance the credit insurance on the front end of the loan. Mr. Eakes closed by urging the Committee to build on the reforms made in Senate Bill 1149, give the North Carolina Insurance Commissioner the authority to adjust credit

insurance rates, and to extend the prohibition on financed credit insurance premiums to consumer loans made by finance companies.

The Committee also heard from Mr. Alan Hirsch , Deputy Attorney General with the Consumer Protection Division of the North Carolina Attorney General's Office. Mr. Hirsch spoke briefly concerning the problems with predatory lending in North Carolina. He stated that equity stripping is the single greatest problem that we have. Mr. Hirsch added that North Carolina wanted to do two things; keep the lending market strong and at the same time stop people from losing their homes. He recognized an article that was printed in USA Today that stated that North Carolina has the premier law in America that protects homeowners. Mr. Hirsch, representing the Attorney General's office, stated that in their judgement, financed single-premium credit insurance is the single worst practice in destroying homeownership in North Carolina. Reputable finance companies are willing to give single-premium credit insurance up because they recognize that it is an unfair business practice. Mr. Hirsch concluded that the State of North Carolina had done a very good thing here and we should not consider turning back.

The Committee also heard from Ms. Geraldine Malindis with the Affordable Housing Coalition in Asheville, North Carolina. Ms. Malindis emphasized that she had actually witnessed people lose their homes due to predatory lenders charging the up front fees for credit life insurance. Ms. Malindis urged the Committee to please think about this as if it were their own home.

Second Meeting -- March 24, 2000

The second meeting of the Committee began with a presentation by Mr. Guy Rohling, representing the Consumer Credit Insurance Association. Mr. Rohling stated that the Consumer

Credit Insurance Association supports legislation that prohibits unscrupulous mortgage lenders from preying upon North Carolina citizens, however they feel that this legislation denies consumers the choice of determining which insurance product best suits their needs. Federal preemption may render the prohibition of this legislation meaningless to many lenders. Mr. Rohling stated that many people believed the prohibition is flawed and that the Committee should take the time to fix it. The Committee should extend the effective date for another year and allow a fuller consideration of the issue..

Next the Committee heard from Mr. Joe Johnson, an attorney representing the North Carolina Financial Services Association, who was asked to speak to the effects of recent federal legislation as it applies to the Act under consideration here. Mr. Johnson spoke about the Gramm-Leach-Bliley Act, U.S. Senate Bill 900, which relates to the repeal of the Glass-Steagall Act regarding the separation of insurance and banking activities. The United States Congress enacted the Gramm-Leach-Bliley Act in 1999 after the North Carolina General Assembly passed the North Carolina Predatory Lending Act. Accordingly, this federal law was not taken into consideration by the General Assembly as part of its consideration of the Predatory Lending Act. The Gramm-Leach-Bliley Act prohibits a State "by statute, regulation, order, interpretation, or other action" from preventing or restricting a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in certain insurance activities, including credit insurance activities." The Gramm-Leach-Bliley Act appears to preempt the provisions of G.S. 24-10.2(b) of the North Carolina Predatory Lending Act prohibiting the financing of single-premium credit insurance. Mr. Johnson offered a solution by saying the State may regulate the sale of credit insurance through its normal process of examining rates and forms. This is something that the Commissioner of Insurance does for all

admitted insurance in North Carolina and the Legislature can give him the power if he doesn't already have the power to regulate the rates and forms as it relates to credit insurance.

In response to a questions, Mr. Johnson replied by saying that federal deposit institutions are already exempted and that the Gramm-Leach-Bliley Act would expand the exemption to any depository institution that is insured by the FDIC. When asked what his opinion was if the Committee decided not to make a recommendation to delay the prohibition of single-premium financing of credit insurance, Mr. Johnson responded that the only recourse for those people who sell this product would be to seek some kind of declaratory judgement or possibly an injunction of enforcement of the statute.

Next the Committee heard from Mr. Mike Rulison, President of the North Carolina Consumers Council. The North Carolina Consumers Council considers credit insurance to be a problem product. He made a comparison of credit life insurance providing five years of coverage but paid for over 30 years to buying a car that is useable for fifteen years and paying for it over ninety years. He stated that it is not in the consumer's best interest to allow contracts such as these to be written.

The Committee then heard from Mr. Richard Hatch, AARP's North Carolina Coordinator for Economic Security. Mr. Hatch made a statement on behalf of AARP opposing repeal of the provisions of the Predatory Lending Law prohibiting single-premium credit insurance on home loans

The next speaker was Mr. Greg Kirkpatrick, Executive Director for Wake County Habitat for Humanity, who stated that Habitat for Humanity supports Senate Bill 1149 and they hated to

see its effectiveness stripped. Mr. Kirkpatrick would encourage the Legislature to maintain the prohibition against financing single-premium credit insurance.

Mr. Peter Skillern, Executive Director of the Community Reinvestment Association of North Carolina spoke to the Committee. His association is a consumer advocacy organization that works to build and protect wealth in low-income communities. He urged the Committee to continue to support the prohibition.

Mr. Rob Schofield, a lawyer with the North Carolina Justice and Community Development Center, spoke in support of the prohibition and in extension of this prohibition to small non-mortgage loans

The Committee also heard from Mr. Martin Eakes, representing the Coalition for Responsible Lending. He stated that his organization opposed a one-year extension on the beginning date for the prohibition on the sale of single premium credit insurance. He stated that this extension would cost consumers \$100 million in lost equity of their homes. Mr. Eakes said that he had the personal assurance of the CEO's of Fannie Mae and Freddie Mac, the two largest housing home ownership corporations in America, that they would no longer purchase any loans or any securities that had financed credit insurance on the loan. Mr. Eakes felt that this was a very strong precedent and that many more similar prohibitions on financing single premium credit insurance would be coming. Mr. Eakes said that his organization was not trying to eliminate credit insurance but simply wanted it paid for on a monthly basis where there weren't these outrageous interest charges.

Mr. Allan Hirsch, an attorney with the Attorney General's Office, addressed the federal preemption question by saying that his office had reviewed this legislation in great detail while it was being considered in Congress and it is their view that Senate Bill 1149 is not preempted by the Gramm-Leach-Bliley Act. He quoted a statement that United States Senator John Edwards made on the floor of the Senate indicating that the North Carolina Predatory Lending Act was creating legislative history and this federal law would in no way preempt the measures taken by the State of North Carolina. The idea of delaying this prohibition for a year would be a tragic mistake, Mr. Hirsch stated.

Mr. Joe Johnson was asked to respond to the statement that Mr. Hirsch quoted from U.S. Senator Edwards on the preemption issue. Mr. Johnson stated every member of Congress has an opinion and an individual speech does not necessarily qualify as representing legislative intent.

Mr. Bill Hale, a representative of the North Carolina Department of Insurance, was asked if it was correct to assume that payout on credit life insurance was around 40%, whereas other life insurance policies it is around 60%. Mr. Hale said he thought that was correct and he also stated that the Department was shooting for a 60% loss ratio payout on credit insurance based on the most recent legislative change in the statutory rate permitted for credit insurance premiums. Mr. Hale said the Department of Insurance was bound by the statutes and the law was rewritten to hopefully phase up to a 60% loss ratio. The option for the General Assembly would be to give the Department of Insurance the authority to set the rates to get to the 60% ratio. Mr. Hale stated that the Department was already doing it for credit family-leave insurance and involuntary unemployment insurance.

Third Meeting -- April 7, 2000

The third meeting of the Committee began with the presentation of a bill draft. Karen Cochrane-Brown, Committee Co-Counsel, was asked to explain what the bill was intended to do. Ms. Cochrane-Brown stated that the bill draft was intended as a technical change to the credit insurance portion of the Predatory Lending Bill that was passed during the last session of the General Assembly. She stated that this bill would amend G.S. 24-10.2(b) by deleting two words from the law as it was enacted last year. The two words to be deleted are "calculated and" and it changes the section of the law to read: "Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums paid on a monthly basis shall not be considered financed by the lender". Ms. Cochrane-Brown stated that the prohibition against financing credit insurance would remain in place. The intention, as staff understood it, is to allow lenders to collect monthly insurance premiums on behalf of the borrower. This would not in any way allow financing which is prohibited by the first part of the sentence in G.S.24-10.2(b). This would just remove the requirements that the insurance premiums be calculated based on the declining balance every month. Ms. Cochrane-Brown said it was her understanding that the way the law currently reads, the words "calculated and paid" imply that you have to recalculate the premium every month based on the declining balance. In order to level the premium out you would need to take out this language and by doing this it gives you the option to average credit insurance payments. This amendment would allow a borrower and a lender to choose to have the premium paid by the declining balance method (recalculated every month) or leveled out and paid in equal amounts every month. By deleting the two words in the current law, either of these methods could be used

Next the Committee heard from Mr. Alan Hirsch, head of the Attorney General's Consumer Protection Division, who stated that he disagreed that this change was just a "technical amendment". Mr. Hirsch stated that by doing this, you repeal the entire provision of the law. Mr. Hirsch added that this change allows the exception to swallow the rule and the result would be that financing single-premium insurance will continue to be permitted in North Carolina. He added that if it was the intention to make a technical amendment to allow monthly earned premiums to be level, that it could be done in the insurance statutes without effecting this protection that has been put in place.

The Committee also heard from Mr. Martin Eakes, representing the Coalition for Responsible Lending, who stated that the position of the Coalition would be to oppose this change because the benefits that the consumer would get in terms of reducing the payment are very negligible over the life of most mortgage loans.

Bill Burfiend, a representative of the Consumer Credit Insurance Association, gave a brief presentation clarifying the two methods of payment of premiums, the declining balance method and averaging out or level premium method.

After discussion, a motion was made to make a report to the Legislative Research Commission that a bill to eliminate the word "calculate and" from G.S. 24-10.2(b) be recommended. The motion passed with a 6 - 3 vote.

Fourth Meeting - April 27, 2000

The final meeting of the Committee prior to the convening of the 2000 Session took place on April 27, 2000. During the meeting the Committee discussed and approved the interim report to be submitted to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

Findings

1. North Carolina's Predatory Lending Law is recognized as the most comprehensive and beneficial mortgage lending law for consumers in the nation. Several other states are now using our law as a model to prevent unscrupulous lenders from stripping the equity from homeowners.
2. The Predatory Lending Law specifically prohibited the financing of single premium credit insurance. It is widely believed that while the purchase of credit insurance on a monthly basis may be appropriate in some circumstances, the *financing* of single premium credit insurance provides no benefit to consumers.
3. The current law provides that "insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender". This language suggests that the only type of credit insurance that will be allowed is that which is calculated monthly based on the declining balance of the loan, and paid in different amounts each month.
4. Consumers would benefit if premiums were leveled over the term of the insurance, and paid on a monthly basis, so long as the premiums are not financed as prohibited by law.

5. The law should allow consumers who chose to purchase credit insurance to pay the premiums either on the monthly outstanding balance basis or on the level charge basis.

Recommendations

Based on the findings, the Committee recommends the following proposed legislation:

A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT CREDIT INSURANCE MAY BE PAID ON A LEVEL CHARGE MONTHLY BASIS WITHOUT VIOLATING THE LAW RELATING TO CONSUMER PROTECTIONS IN CERTAIN HOME LOANS.

APPENDICES

APPENDIX A

CHAPTER 395

1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

.....
(10) Consumer protection issues:

-
- e. Credit insurance and mortgage credit, including the licensing, regulation, and examination of mortgage brokers and mortgage lenders, financing of credit insurance premiums, and other aspects of the mortgage market relating to the availability of mortgage credit. These issues may be studied in conjunction with issues required to be studied under Senate Bill 1149 (1999 Session).

.....

Section 2.2. Committee Membership. – For each Legislative Research Commission committee created during the 1999-2001 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Section 2.3. Reporting Date. – For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1999 General Assembly, 2000 Regular Session, or the 2001 General Assembly.

Section 2.4. Funding. – From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

CHAPTER 332
1999 Session Laws (1999 Session)

AN ACT TO MODIFY PERMISSIBLE FEES MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO PROVIDE FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

The General Assembly of North Carolina enacts:...

...

Section 7. The Legislative Research Commission shall study the implementation and enforcement of this act including:

.....

- (3) Whether there are specific circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums, which practice is prohibited by G.S. 24-10.2(b).

The Commission shall report their findings and recommendations on the issue of financing credit insurance premiums to the 2000 Regular Session of the 1999 General Assembly. The Commission may report their findings and recommendations to the 2001 General Assembly and shall make a final report to the 2002 Regular Session of the 2001 General Assembly.

....

APPENDIX B

CREDIT INSURANCE AND MORTGAGE

CREDIT COMMITTEE (LRC)

1999-2001

S.L. 1999-395

Pro Tem's Appointments

Sen. R.C. Soles, Jr., Cochair
PO Box 6
Tabor City, NC 28463
910/653-2015

Sen. Betsy Cochrane
122 Azalea Circle
Advance, NC 27006
336/998-8893

Mr. Roney Lamm, Jr.
CitiFinancial
5400 Glenwood Ave., Suite G-05
Raleigh, NC 27612

Mr. Donald C. Lampe
PO Box 21927
Greensboro, NC 27420

Sen. Aaron Plyler
2710 Concord Ave.
Monroe, NC 28110
704/289-1577

Mr. Banks M. Wood
5523 Kelly Grange Place
Charlotte, NC 28226

Staff
Karen Cochrane-Brown
Walker Reagan
Research Division

Speaker's Appointments

Rep. Walter Church, Sr., Cochair
PO Box 760
Valdese, NC 28690
828/874-2141

Rep. Gordon Allen
PO Box 100
Roxboro, NC 27573
336/599-2175

Rep. William Culpepper, III
PO Box 344
Edenton, NC 27932
252/482-2175

Rep. Andrew Dedmon
PO Box 293
Earl, NC 28150
704/487-7272

Rep. Jimmie Ford
2203-B Koonce Street
Goldsboro, NC 27530
919/581-8726

Rep. Edith Warren
PO Box 448
Farmville, NC 27828
252/753-4198

Clerk

Susan Burleson
919/733-5746

APPENDIX C

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-332
SENATE BILL 1149

AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO PROVIDE FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1A reads as rewritten:

"§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.

(a) Notwithstanding any other provision of this ~~Chapter~~, Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

- (1) Where the principal amount is ten thousand dollars (\$10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;
- (2) Where the principal amount is less than ten thousand dollars (\$10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the ~~Veterans Administration~~, Department of Veterans Affairs, a national mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;
- (3) Where the principal amount is less than ten thousand dollars (\$10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.
- (4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal

balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent ($\frac{1}{2}$ of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent ($\frac{1}{2}$ of 1%), the Commissioner shall round downward to the lower one-half of one percent ($\frac{1}{2}$ of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

~~(b) No prepayment fees shall be contracted by the borrower and lender with respect to any home loan where the principal amount borrowed is one hundred thousand dollars (\$100,000) or less, otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan. Except as provided in subdivision (1) of this subsection, a lender and a borrower may agree on any terms as to the prepayment of a home loan.~~

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which: (i) the principal amount borrowed is one hundred fifty thousand dollars (\$150,000) or less, (ii) the borrower is a natural person, (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iv) the loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

~~(c) Except as limited by subsection (b) above, a lender may charge to the borrower the fees described in G.S. 24-10. Provided, if the loan is one described in subsection~~

~~(a)(1) or subsection (a)(2) above, the parties may agree to the payment of discount points, commitment fees, finance charges, or other similar charges agreed upon by the parties notwithstanding the provisions of any state law limiting the amount of discount points, commitment fees, finance charges or other similar charges which may be charged, taken, received or reserved with respect to a home loan. Provided further, that no lender on loans under G.S. 24-1.1A(a)(3) may charge or receive any fees or discount points other than the interest permitted in G.S. 24-1.1A(a)(3). If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges as permitted in G.S. 24-10.1:~~

- ~~(1) At or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:~~

 - ~~a. Loan application, origination, and commitment fees;~~
 - ~~b. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of the interest rate or time-price differential;~~
 - ~~c. Assumption fees to the extent permitted by G.S. 24-10(d);~~
 - ~~d. Appraisal fees to the extent permitted by G.S. 24-10(h);~~
 - ~~e. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and~~
 - ~~f. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan, or (ii) one hundred fifty dollars (\$150.00).~~
- ~~(2) Except as provided in subsection (g) of this section with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:~~

 - ~~a. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;~~
 - ~~b. Assumption fees to the extent permitted by G.S. 24-10(d);~~
 - ~~c. Appraisal fees to the extent permitted by G.S. 24-10(h);~~
 - ~~d. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and~~

- e. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or (ii) one hundred fifty dollars (\$150.00). The fees and charges permitted by this sub-subdivision may be charged only pursuant to a written agreement which states the amount of the fee or charge and is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific modification, renewal, extension, or amendment is requested.

(c1) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(c2) No lender on home loans under subdivision (a)(4) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

(d) The loan or investments regulated by G.S. 53-45 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a ~~loan~~ loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars (\$300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations.

(g) The parties to a home loan governed by ~~G.S. 24-1.1A(a) (1) or (2)~~ subdivision (a)(1) or (2) of this section may contract in writing to defer payments of interest the payment of all or part of one or more unpaid installments and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree in writing that said deferred interest may be added to the principal balance of the loan. This subsection shall not be construed to limit payment of interest upon interest in connection with other types of loans. Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one or more unpaid installments. If the home loan is of a type described in subdivision (1) of this subsection, the deferral fees shall be subject to the limitations set forth in subdivision (2) of this subsection:

- (1) A home loan will be subject to the deferral fee limitations set forth in subdivision (2) of this subsection if:
- a. The borrower is a natural person;
 - b. The debt is incurred by the borrower primarily for personal, family, or household purposes; and
 - c. The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.
- (2) Deferral fees for home loans identified in subdivision (1) of this subsection shall be subject to the following limitations:
- a. Deferral fees may be charged only pursuant to an agreement which states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for 15 days or more, the agreement must be in writing and signed by at least one of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.
 - b. Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars (\$50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.
 - c. If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.
 - d. If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new deferral agreement is entered into with respect to that installment.
 - e. No lender may charge a deferral fee for modifying or extending the maturity date of a loan or the date a balloon payment is due; provided, however, that any such modification or extension of the loan maturity date or the date a balloon payment is due shall, to the extent applicable, be considered a modification or extension subject to the provisions of subdivision (c)(2) of this section.

(h) The parties to a home loan governed by G.S. 24-1.1A(a) (1) or (2) subdivision (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust which provides that periodic payments may be graduated during parts of or over the entire

term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust which provides that periodic disbursements of part of the loan proceeds may be made by the lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(i) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a home loan."

Section 2. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-1.1E. Restrictions and limitations on high-cost home loans.

(a) Definitions. -- The following definitions apply for the purposes of this section:

- (1) 'Affiliate' means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.
- (2) 'Annual percentage rate' means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).
- (3) 'Bona fide loan discount points' means loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.
- (4) A 'high-cost home loan' means a loan other than an open-end credit plan or a reverse mortgage transaction in which:
 - a. The principal amount of the loan does not exceed the lesser of (i) the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association, or (ii) three hundred thousand dollars (\$300,000);
 - b. The borrower is a natural person;
 - c. The debt is incurred by the borrower primarily for personal, family, or household purposes;
 - d. The loan is secured by either (i) a security interest in a manufactured home (as defined in G.S. 143-147(7)) which is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

- e. The terms of the loan exceed one or more of the thresholds as defined in subdivision (6) of this section.
- (5) 'Points and fees' means:
- a. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;
 - b. All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase 'points and fees';
 - c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a. or b. of this subdivision;
 - d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents; and
 - e. 'Points and fees' shall not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this subdivision; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.
- (6) 'Thresholds' means:
- a. Without regard to whether the loan transaction is or may be a 'residential mortgage transaction' (as the term 'residential mortgage transaction' is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a 'mortgage' under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and fees payable by the borrower at or before the loan closing exceed (i) five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars (\$1,000), if the total loan amount is less than twenty thousand dollars (\$20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;
2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;
3. Prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing; or

c. The loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

(7) 'Total loan amount' means the same as the term 'total loan amount' as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.

(b) Limitations. -- A high-cost home loan shall be subject to the following limitations:

- (1) No call provision. -- No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to

- a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.
- (2) No balloon payment. -- No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.
 - (3) No negative amortization. -- No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.
 - (4) No increased interest rate. -- No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.
 - (5) No advance payments. -- No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
 - (6) No modification or deferral fees. -- A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(c) Prohibited Acts and Practices. -- The following acts and practices are prohibited in the making of a high-cost home loan:

- (1) No lending without home-ownership counseling. -- A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.
- (2) No lending without due regard to repayment ability. -- As used in this subsection, the term 'obligor' refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's

transfer, or convey or otherwise confer upon or for the benefit of the lender or any other person, firm, or corporation any sum of money, thing of value, or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the General Statutes.

(b) Notwithstanding any contrary provision of State law, if the principal amount of a loan is three hundred thousand dollars (\$300,000) or more, any borrower may agree to pay, and any lender or other person may charge and collect from the borrower, interest, fees, and other charges as may be agreed upon between the parties, and the borrower and anyone claiming by or through the borrower is prohibited from asserting usury as a claim or defense.

(c) The provisions of this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm, or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan.

(d) Notwithstanding any contrary provision of State law, any lender may collect money from the borrower for the payment of (i) bona fide loan-related goods, products, and services provided or to be provided by third parties, and (ii) taxes, filing fees, recording fees, and other charges and fees paid or to be paid to public officials. No third party shall charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed. Loan-related goods, products, and services include fees for tax payment services, fees for flood certification, fees for pest-infestation determinations, mortgage brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

(e) Notwithstanding any contrary provision of State law, any lender may receive the proceeds from any insurance policies where loss occurs under the terms of such policies.

(f) This section shall not be applicable to any corporation licensed as a 'Small Business Investment Company' under the provisions of the United States Code Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange."

Section 5. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-10.2. Consumer protections in certain home loans.

(a) For purposes of this section, the term 'consumer home loan' shall mean a loan in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of 'flipping' a consumer home loan. 'Flipping' a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in G.S. 24-1.1E(a)(6).

(d) No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.

(e) The making of a consumer home loan which violates the provisions of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any party to a consumer home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(f) In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

- (1) The party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
- (2) The party instituting the action knew, or should have known, that the action was frivolous and malicious.

(g) This section establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law."

Section 6. Of the funds appropriated to the Department of Justice for the 1999-2000 fiscal year, the sum of one hundred thousand dollars (\$100,000) may be used to develop and implement a program of consumer counseling or awareness designed to inform the public about the methods by which predatory lenders impose unconscionable and noncompetitive fees and charges as part of complex home mortgage transactions, to protect the public from incurring such fees and charges, and otherwise to encourage the informed and responsible use of credit.

Section 7. The Legislative Research Commission shall study the implementation and enforcement of this act including:

- (1) Whether the provisions of this act have a measurable effect on the availability of credit in the State;
- (2) Whether the act is successfully reducing the predatory lending practices proscribed by the act; and
- (3) Whether there are specific circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums, which practice is prohibited by G.S. 24-10.2(b).

The Commission shall report their findings and recommendations on the issue of financing credit insurance premiums to the 2000 Regular Session of the 1999 General Assembly. The Commission may report their findings and recommendations to the 2001 General Assembly and shall make a final report to the 2002 Regular Session of the 2001 General Assembly.

Section 8. Section 2 of this act and G.S. 24-10.2(b), as enacted in Section 5 of this act, become effective July 1, 2000, and apply to loans made or entered into on or after that date. Section 6 of this act becomes effective July 1, 1999. Section 7 of this act is effective when this act becomes law. The remainder of this act becomes effective October 1, 1999, and applies to loans made or entered into, payments deferred, and loans modified, renewed, extended, or amended on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:35 a.m. this 22nd day of July, 1999

APPENDIX D
DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

99-ROZ-018.1(4.27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

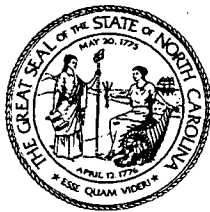
Short Title: Credit Ins. Clarification.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT CREDIT INSURANCE MAY BE PAID ON A LEVEL
3 CHARGE MONTHLY BASIS WITHOUT VIOLATING THE LAW RELATING TO
4 CONSUMER PROTECTIONS IN CERTAIN HOME LOANS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 24-10.2(b) reads as rewritten:
7 "(b) Notwithstanding the provisions of G.S. 58-57-35(b), it
8 shall be unlawful for any lender in a consumer home loan to
9 finance, directly or indirectly, any credit life, disability, or
10 unemployment insurance, or any other life or health insurance
11 ~~premiums; premiums. provided, that insurance premiums calculated~~
12 ~~and paid on a monthly basis shall not be considered financed by~~
13 ~~the lender. Premiums for credit life, disability, or unemployment~~
14 insurance, or any other life or health insurance in a consumer
15 home loan shall be charged, collected, and paid only on a monthly
16 basis and only for the term of the insurance coverage.
17 Notwithstanding G.S. 58-57-40(g) or G.S. 58-57-45(f), a credit
18 insurance company may charge the same level premium each month
19 over the term of the insurance coverage under this subsection."
20 Section 2. This act becomes effective July 1, 2000.



99-ROZ-018.1(4.27): Credit Ins. Clarification.

BILL ANALYSIS

Committee: LRC-Credit Insurance and
Mortgage Credit Committee
Date: April 27, 2000
Version: 99-ROZ-018.1(4.27)

Introduced by:
Summary by: Karen Cochrane Brown
Committee Co-Counsel

SUMMARY:

This bill draft amends the Predatory Lending Law to allow credit insurance to be paid monthly on a level charge basis without violating the law relating to consumer protections in certain home loans.

CURRENT LAW:

In 1999, the General Assembly enacted S.L. 1999-332, which makes several changes in the law relating to mortgage loans to prohibit predatory lending. The act modifies the kinds and amounts of fees, which may be charged to a borrower by a lender in connection with a home loan, including prohibiting prepayment penalties on home loans of \$150,000 or less. The act also places restrictions on "high cost home loans, which are loans that exceed certain thresholds related to interest rate, points and fees, and prepayment fees. If a loan is determined to be a "high cost home loan", it is subjected to several limitations, such as the requirement that the borrower obtain loan counseling before the loan can be closed. These requirements are designed to create a very high disincentive to make such loans.

In addition, the Act makes the following practices unlawful, when used in connection with a consumer home loan:

- Financing credit life, disability, or unemployment insurance or other life or health insurance, other than where premiums are calculated and paid on a monthly basis.
- The practice of "flipping", which is making a loan to a borrower that refinances an existing loan, unless there is reasonable tangible benefit to the borrower.
- Encouraging a borrower to default on a loan prior to or in connection with the closing of a loan that refinances an existing loan.

The Act authorized the Legislative Research Commission to study several issues including whether there are any circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums. The provisions relating to "high cost home loans" and prohibiting the financing of credit insurance become effective July 1, 2000.

BILL ANALYSIS:

The bill draft amends the provision that prohibits the financing of credit insurance to allow insurance premiums to be charged, collected and paid only on monthly basis for the term of the loan, without violating the law. The bill also permits credit insurance companies to charge level premiums for outstanding balance coverage without requiring the premiums to be actuarially equivalent. This change

99-ROZ-018.1(4.27)

Page 2

does not alter the basic prohibition against financing of credit insurance. This act would become effective July 1, 2000.

